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CALIFORNIA PUBLIC UTILITIES COMMISSION ENTERS ORDER TO DETERMINE WHETHER PENALTIES SHOULD BE IMPOSED ON PG&E FOR INTENTIONAL VIOLATION OF UTILITY LOCATION AND MARKING LAWS

On Friday, December 14, 2018, the California Public Utilities Commission (CPUC) entered an order opening a formal proceeding against Pacific Gas and Electric Company (PG&E) for what CPUC staff determined are systemic violations of rules to prevent damage to natural gas pipelines during excavation activities.

The CPUC directed PG&E to take immediate corrective measures and to attest under penalty of perjury that it is conducting natural gas pipeline locate and mark efforts and programs in a safe manner consistent with all applicable law. California laws, such as Government Code Sections 4216 et seq., require utilities to timely locate and mark natural gas pipelines. The purpose of these laws is to ensure that third party construction excavation does not damage underground facilities or result in accidents endangering construction workers and the public.

A CPUC Safety and Enforcement Division (SED) staff investigation report determined that PG&E falsified locate and mark records from 2012 to 2017. Specifically, the report finds that:

- PG&E lacked sufficient staffing to locate and mark natural gas pipeline in compliance with law;
- PG&E management pressured supervisors and locators to complete the work resulting in PG&E staff falsifying data so requests for pipeline locating and marking would not appear to be late;

- It was common knowledge among PG&E supervisors that locators falsified data; and
- PG&E had received input from external parties that there were discrepancies in its late locate and mark reporting.

The CPUC Investigation to Date

CPUC's investigation of PG&E began on April 28, 2016, when the federal Pipeline and Hazardous Materials Safety Administration (PHMSA), notified SED that PG&E had possibly falsified many of its locate and mark records. The CPUC's staff conducted a pre-formal investigation, which included Examinations Under Oath, data requests, extensive communications with PG&E, consideration of a report from the Common Ground Alliance, and review of PG&E internal reports. PG&E commissioned two reports from outside consultants, the "Guidepost Report" and a report from Bates White, both of which confirmed systematic fraudulent reporting by PG&E.

According to the CPUC, "the Guidepost Report provides the following conclusions related to PG&E's falsification of tickets so that they would not appear as late:"

- i. PG&E lacked sufficient locate and mark staffing to timely complete locate and mark work.
- ii. PG&E placed inherent pressure on locators to complete the work.
- iii. It was common knowledge among supervisors that locators entered false notes to avoid tickets from going late.
- iv. PG&E received input from external parties that there were "discrepancies in its late ticket reporting."
- v. PG&E management added pressure to avoid late tickets.
- vi. Supervisors and locators felt pressure to falsify tickets so they would not appear as late.

With regard to Guidepost Report conclusions, a PG&E manager told the CPUC that PG&E partly evaluated his job performance based upon whether he achieved a goal of zero late tickets.

PG&E retained Bates White to determine, based on information available in a repository of information called "irth Utilisphere," the number of times PG&E responded late to "call before you dig" requests made through 811 call centers. Bates White states that it specializes in "advanced economic, financial, and econometric analysis and excels at complex matters that requires sophisticated problem solving and deep empirical analysis."

According to the CPUC order, PG&E has accepted as true the facts in the Bates White report. The Bates White report provided upward revisions to PG&E's late ticket counts and identified associated utility strikes ("dig ins"). Based on the Bates White report, CPUC staff concluded that PG&E violated safety requirements, such as California

Government Code Section 4216, by undercounting, and other safety requirements if such undercounting caused or was a contributing factor to damage to facilities from dig ins.

Further Actions by CPUC

During the penalty consideration case, which is similar to a court case, an Administrative Law Judge for the CPUC will hear testimony from CPUC's Safety and Enforcement Division and other parties to the proceeding, as well as PG&E. PG&E must demonstrate why the CPUC should not certify the findings in Safety and Enforcement Division's original report and impose penalties and/or any other form of relief. CPUC's December 14, 2018, order directs PG&E to provide a report on these matters and to provide additional information as requested by the CPUC.

Please contact our office if you have questions or would like further information.

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